Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 2, 2018

CLAIM NO. 201662626

TAMARA E. BRISBAY PETITIONER

VS. **APPEAL FROM HON. BRENT E. DYE, ADMINISTRATIVE LAW JUDGE**

KENTUCKYONE HEALTH and
HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Tamara Brisbay ("Brisbay") appeals from the July 16, 2018 Opinion and Order, and the July 30, 2018 Order denying her petition for reconsideration rendered by Hon. Brent Dye, Administrative Law Judge ("ALJ"). The ALJ dismissed Brisbay's claim after finding her left ankle condition was idiopathic, and did not arise from her employment with KentuckyOne Health ("KentuckyOne").

On appeal, Brisbay argues she suffered a compensable, work-related injury. She first argues the ALJ erroneously applied the law regarding unexplained or idiopathic falls since she did not fall. In the alternative, Brisbay argues Kentucky-One did not satisfy its burden of proof under the law of unexplained or idiopathic falls. Because the ALJ performed the appropriate legal analysis, substantial evidence supports his decision, and no contrary result is compelled, we affirm.

Brisbay filed a Form 101 alleging she injured her left ankle on October 28, 2016. However, at the benefit review conference ("BRC") held on May 8, 2018, the parties stipulated the alleged/contested work-related injury occurred on October 27, 2016. The ALJ additionally referred to October 27, 2016 as the date of the alleged work injury in his opinion and order on reconsideration, and Brisbay testified the injury occurred on October 27, 2016. In light of the above, October 27, 2016 is deemed the date of the alleged work injury. The Form 101 reflects Brisbay's injury occurred in the following manner: "Plaintiff was walking down the stairs of the parking garage at Kentucky One Health when she felt and heard a 'pop' in her left ankle causing her to fall on her knees." Brisbay began working for KentuckyOne as a registered nurse on May 12, 1986.

Brisbay testified by deposition March 6, 2018, and at the hearing held May 21, 2018. At all relevant times, Brisbay worked as a peripherally inserted central catheter ("PICC") nurse for KentuckyOne. Brisbay's job primarily involved inserting catheters in patients throughout the hospital, which in turn required prolonged standing, walking, and maneuvering carts containing hospital equipment.

Brisbay testified that on October 27, 2016, she parked in the Kentucky-One parking garage on the second or third floor to go into work. As she descended a flight of stairs in the parking garage, she experienced a pop and then pain in her left ankle/foot. At the hearing, Brisbay stated she did not completely fall down. Rather, she managed to catch herself with the handrail she held onto as she was falling. Brisbay could not recall stepping or slipping on anything which would have precipitated the fall. Brisbay was unable to recall anything odd or out of the ordinary about the stairs, other than describing the steps as "kind of short." Brisbay provided conflicting testimony regarding the location of the pain and pop she felt on the steps in the parking garage. At her deposition, Brisbay testified the pop and pain were located on the lateral (or outside) and bottom of her left foot and ankle. At the hearing, Brisbay testified the pop and pain occurred on the medial (inside) area of her left foot. A November 2016 MRI demonstrated a complete rupture of the posterior tibial tendon.

Brisbay went the emergency room on the day of the garage incident, and reported she had just undergone a left ankle MRI the day prior, on October 26, 2016. Brisbay next treated with Dr. Joseph Skurka who prescribed a boot and ordered an MRI. After no improvement, her physician recommended surgery. Brisbay saw Dr. Lisa Degnore for a second opinion, who provided her the option of surgery or a conservative course of treatment. Brisbay opted for the latter. Brisbay has not returned to work since the October 27, 2016 accident, nor does she believe she is capable of performing PICC nurse duties.

Brisbay testified she fell over a chair at work on November 4, 2015, landing on her knees and left foot. She could not recall any treatment for that injury other than having x-rays of her knees and left foot. Brisbay indicated she injured the lateral (outside) aspect of her foot and ankle. At her deposition, Brisbay indicated she injured the same area of the left ankle and foot less than a year later on October 27, 2016. However, at the hearing, Brisbay indicated she injured the outside of the left foot/ankle in the November 2015 incident, and the inside of her foot in the October 27, 2016 incident. Brisbay indicated she was not restricted from work after the 2015 incident, and resumed her normal work duties, although she continued to experience discomfort and pain.

Brisbay also acknowledged she was diagnosed with rheumatoid arthritis in 2015 or 2016, a condition affecting her feet, by a nurse practitioner in the Rheumatology Department at the Lexington Clinic. Brisbay acknowledged she was prescribed medication for this condition prior to the October 27, 2016 work accident, but had never missed any work. Brisbay currently takes Methotrexate for arthritis.

On October 26, 2016, the day before the work incident, Brisbay underwent an MRI of her left foot and ankle. At her deposition, Brisbay provided the following explanation:

> [B]ecause since the fall a year prior, I had continued to have some discomfort, pain in that foot . . . I had told my rheumatologist on visits, we were just waiting it out. At the beginning of October, it was hurting, it was a great deal of discomfort. I went to a KentuckyOne Health walk-in clinic in Richmond. I saw a nurse practitioner, an x-ray was done, and nothing - - it showed nothing. She did give me prednisone and I called back in a couple of weeks and said that I was still having the discomfort and pain and that's when she

> ordered an MRI, and then that's why I had an MRI done on the 26th of October.

Brisbay provided somewhat similar testimony at the hearing:

> Early October of '16 the outside of my foot was hurting, and I saw a nurse practitioner, just a general nurse practitioner at a walk-in clinic. And so the treatment she gave me for that did not help the discomfort, pain I was having. And so I called them back, and so they asked if I ever had an MRI. And I said no. The only thing I had had was an x-ray.

At the hearing, Brisbay insisted the pain prompting the October 26, 2016 MRI was located on the outside of her foot. In contrast, the pain she felt on the stairs on October 27, 2016 was sharp and sudden, and located on the inside of her foot. Brisbay acknowledged her treating physician has released her to return to work, and she has not been assigned any permanent restrictions.

KentuckyOne filed the November 5, 2015 left foot x-ray report reflecting she had degenerative changes with no acute facture. An October 6, 2016 left ankle x-ray demonstrated mild degenerative joint disease without acute osseous abnormality.

KentuckyOne filed the treatment records from Ms. Susanna Moberly, a nurse practitioner with the Lexington Clinic. Those records reflect Brisbay actively treated for rheumatoid arthritis on at least seven occasions from December 7, 2015 to October 18, 2016. Ms. Moberly consistently diagnosed rheumatoid arthritis, and noted the condition was chronic and worsening in her left elbow and both feet. She primarily prescribed Methotrexate. On October 18, 2016, nine days prior to the work incident, Brisbay's chief complaint was left foot pain and swelling. Ms. Moberly noted the following in the history: "acute visit for left foot pain/ankle pain

and swelling; left elbow swelling conts[sic] on." Ms. Moberly noted her examination demonstrated left ankle stiffness and swelling. She diagnosed Brisbay with "RA chronic and seropositive with symptomatic c/o left foot and ankle pain; left elbow pain." Ms. Moberly prescribed Gabapentin in addition to the Methotrexate, and administered an injection into the left ankle joint and left elbow.

KentuckyOne filed the October 26, 2016 left ankle MRI report from Saint Joseph Hospital. Significantly, the MRI demonstrated heterogeneous abnormal signal within posterior tibial tendon with surrounding soft tissue inflammation consistent with partial intrasubstance tear.

Brisbay returned to the Saint Joseph Hospital emergency room the next day, and provided the following history: "walking down the steps when she 'felt a pop' in her left ankle. Reports 'problems with that ankle for a while'. Had MRI done yesterday. Patient did not fall." The record also notes Brisbay presented with left ankle and foot pain for approximately one month, then felt a pop on October 27, 2016 with increased pain. Brisbay was diagnosed with a left ankle tendon tear.

KentuckyOne filed Dr. Degnore's May 3, 2017 treatment note. She noted Brisbay's two-year treatment history of rheumatoid arthritis, a left foot injury in 2015 due to a fall, the October 26, 2016 MRI, and the October 27, 2016 incident. She noted the October 26, 2016 MRI demonstrated significant posterior tibial tendinitis with central degeneration and partial intrasubstance, and the November 10, 2016 MRI demonstrated a complete rupture of the posterior tibial tendon with diastases at the rupture site. Dr. Degnore diagnosed a left posterior tibial tendon

rupture, rheumatoid arthritis and midfoot arthritis not currently symptomatic, as well as flattening/abduction through the talonavicular joint. Dr. Degnore discussed two courses of treatment available to Brisbay consisting of surgery or a conservative course of casting, booting and orthotics with physical therapy. Dr. Degnore released Brisbay to return to work on September 27, 2017.

Brisbay filed Dr. Anthony McEldowney's November 16, 2017 report. Brisbay reported a history of rheumatoid arthritis, the 2015 fall injury, the October 26, 2016 left ankle MRI, and the October 27, 2016 work injury. Dr. McEldowney emphasized the October 27, 2016 medical records clearly confirm a work-related left ankle injury. Dr. McEldowney diagnosed a left posterior tibialis tendon tear/ rupture. He opined Brisbay's injury caused her complaints since she arrived at work on October 27, 2016, without restrictions and performed full work activities. For the same reasons, Dr. McEldowney opined Brisbay did not have an active impairment prior to October 27, 2016. He opined the October 27, 2016 injury caused a harmful change to the human organism in the form of a rupture of the left posterior tibialis tendon. Dr. McEldowney assessed an 8% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition, and found Brisbay attained maximum medical improvement ("MMI") on October 27, 2017. He assigned permanent restrictions and opined Brisbay is unable to return to her former job as a nurse.

KentuckyOne filed two reports prepared by Dr. Phillip Dripchak. In the first report dated March 22, 2017, Dr. Dripchak diagnosed Brisbay with planovalgus left foot, ruptured left posterior tibial tendon, sprain of the left spring

ligament, chronic sprain of the left lateral ankle ligaments, left plantar fasciitis, left Achilles tendinosis, left midfoot arthrosis, and Type II accessory navicular. He found Brisbay had not reached MMI. Regarding causation, he stated as follows:

> I would submit that the posterior tibial tendon pathology that was instrumental in its ultimate rupture preexisted her work related accident. It is very timely that she had an MRI the day before it ruptured. The fact that the tendon ruptured going down the steps at work is coincidental, this easily could have occurred anywhere. It just so happened to occur while she was descending the steps at work.
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> In my opinion, there is no medical causation between the intra-articular left ankle injection on October 17[sic], 2016 and the patient's posterior tibial tendon pathology. Posterior tibial tendon dysfunction is a very common entity especially in females of around the same age.
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> [Brisbay's] history of rheumatoid arthritis most likely also contributed to the development of her left ankle and foot tendinitis/arthritis. Obviously for rheumatoid arthritis is not a work related problem.

Dr. Dripchak re-evaluated Brisbay on March 7, 2018. He diagnosed, "incompetent left posterior tibial tendon, sprain left spring ligament, accessory navicular left foot, chronic left foot arthritis, left Achilles tendinosis, and rheumatoid arthritis." Dr. Dripchak provided a lengthy discussion addressing whether Brisbay sustained any work-related injuries and/or developed any work-related conditions regarding her left ankle. He noted the November 4, 2015 work accident and x-rays. Dr. Dripchak found no evidence of any long-term sequelae with this injury given the lack of records from November 5, 2015 to October 26, 2016 documenting Brisbay's current problems due to the 2015 work incident. However, he again opined the ruptured tendon is not work-related, stating as follows:

> Again, as I mentioned during my prior report, I would submit that the posterior tibial tendon tendinopathy/ pathology that was instrumental in its ultimate rupture was already present at the time of the rupture while she was walking down the steps to work on October 27, 2016. From the given records, I would cite supporting evidence as follows. APRN Glen Standafer authored an emergency room note dated October 27, 2016. Under history of present illness section, "the patient presents with left ankle and foot pain. The onset was 4 weeks ago and gradual. The coarse/duration of symptoms is worsening. Type of injury none. Location: Left medial lateral plantar surface ankle foot."
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> The October 26, 2016 MRI demonstrates multiple abnormalities involving the left ankle including tendinopathy of the posterior tibial tendon/partial intrasubstance tear, significant marrow edema within the talus as well as multiple osteochondral lesions around the anterior facet.

He also noted that Brisbay was diagnosed with rheumatoid arthritis in 2014, which pre-existed both the November 4, 2015 and October 27, 2016 incidents. He stated tendon degeneration can also be an age/time related phenomenon that can contribute to tendinopathy. Dr. Dripchak opined as follows:

> In my opinion, it is within reasonable medical probability that the posterior tibial tendon ruptured during a normal activity while she was at/on her way to work. However, as I previously stated, it is just as likely that this could have happened while she was descending stairs at home or any other location. Had these multiple pre-existing factors not been present, it is extremely unlikely that she would have sustained the rupture of her posterior tibial tendon while descending the stairs on October 27, 2016.
> . . . .
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> Tamara on October 27, 2016, was in the process of normal everyday activity just walking down the steps on her way to work. The reason that the tear tibial tendon ruptured was that the tendon was already in a degenerative/altered state: that is the reason for the

> rupture. It was not the fact that she was walking down the steps at work, this could've happened anywhere."

Dr. Dripchak found Brisbay has chronic degenerative/age-related arthritis of her foot, documented on her multiple x-rays in November 2015, as well as on several MRIs performed since that time. He believed Brisbay attained MMI in the summer of 2017, but declined to assess a work-related impairment rating.

The parties identified multiple contested issues at the BRC, including work-relatedness/causation. At the hearing, the parties agreed this issue included whether the injury occurred within the course and scope of employment or due to idiopathic concerns.

The ALJ rendered an opinion on July 16, 2018. He provided the following analysis pertaining to Injury under the Act and work-relatedness/ causation:

> An injury arises "out of" the employment, if the employment causes it, i.e., the employment subjects the worker to an increased risk of activity. Clark County Bd. of Educ. v. Jacobs, 278 S.W.3d 140, 143 (Ky. 2009). An injury occurs in the employment's course, if it takes place during the employment, at a place where the employee may reasonably be, and while the employee is working or otherwise serving the employer's interest. Id. Thus, the "arise out of" language refers to the accident's cause, while the "in the course of" language relates to the accident's time, place, and circumstances. Abbott Laboratory v. Smith, 205 S.W.3d 249, 253 (Ky. App. 2006).
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> There are three risk categories ALJs must analyze, when determining whether the claimant's injury arouse from his employment. The renowned Professor Arthur Larson explained these categories are: (1) risks distinctly associated with employment (e.g., machinery breaking, objects falling, explosives exploding, fingers getting caught in machinery, exposure to toxic substances); (2)

risks that are idiopathic or personal to the claimant (e.g., a disease, internal weakness, personal behavior, or personal mortal enemy that would have resulted in harm regardless of the employment); and (3) neutral risks (e.g., a stray bullet, a mad dog, a running amuck, lightning). Arthur Larson and Lex K. Larson, Larson's Workers' Compensation Law, § 4 (2006).

The ALJ must analyze these risks and determine which, if any, is applicable. These categories also include circumstances when the employment increases a claimant's injury risk more than usual. Increased risks include situations that expose a claimant to a common risk more frequently than the general public. If two risk categories converge, the Kentucky Supreme Court has stated, "[w]here an employment and personal cause combine to produce harm, the law does not weigh the importance of the two causes but considers whether the employment was a contributing factor." Jefferson County Public Schools v. Stephens, 208 S.W.3d 862, 866 (Ky. 2006).

The second risk pertains to "idiopathic" causes. An accident's underlying source is idiopathic if an internal weakness, disease, or something personal to the claimant, as opposed to the employment, causes it. Id. Idiopathic causes can include disease, internal weakness, fainting, dizziness, heart attack, and/or seizure. Idiopathic conditions cause harm despite the employment type.

After weighing the evidence, and analyzing the applicable law, the ALJ finds Brisbay did not meet her burden. Brisbay did not prove her left ankle condition arose from her KentuckyOne employment. She did not prove her left ankle condition occurred from a risk distinctly associated with KentuckyOne employment. Instead, the ALJ finds an idiopathic and personal risk (an internal weakness) caused Brisbay's left ankle condition, and it would have occurred despite her KentuckyOne employment. The evidence's totality supports this finding. The ALJ prejudicially dismisses Brisbay's claim. KentuckyOne does not have any liability.

As a preliminary matter, the ALJ notes Brisbay's incident occurred in KentuckyOne's parking garage. There is not any dispute KentuckyOne owned and operated this garage. Therefore, the ALJ finds Brisbay's incident occurred on KentuckyOne's operating premises. An employer is responsible for work-related injuries that occur on its entire "operating premises," and not just at the injured worker's worksite. Ratliff v. Epling, 401 S.W.2d 43 (Ky. 1966). The ALJ, however, finds Brisbay did not sustain a work-related injury.

As a secondary matter, the ALJ notes the accident's cause is not "unexplained." The parties' experts agree that Brisbay's left posterior tibial tendon completely tore, from its pre-existing partially torn state, while descending KentuckyOne's parking garage stairs. Therefore, the Workman presumption is inapplicable.

The ALJ finds a risk distinctly associated with Brisbay's KentuckyOne employment did not cause her left ankle condition. Brisbay was a PICC nurse. Her job involved walking throughout the hospital, and inserting, as well as checking, PICCs. Brisbay's job, while treating patients, physically required: bending, twisting, turning, and some lifting. Her left ankle condition, however, did not occur, while performing these activities. Instead, Brisbay's left ankle condition occurred, while simply walking down the parking garage's steps.

Although Brisbay's job required walking, there is not any evidence it required repetitive stair use. There is not any evidence Brisbay's job required frequently going up and down stairs that would expose her to greater risk. There is not any evidence indicating how many times a day Brisbay used the stairs. There is not any evidence KentuckyOne required Brisbay to use the stairs, as opposed to an elevator. There is not any evidence KentuckyOne had an elevator, and, if so, whether it worked.

There is not any credible evidence these stairs posed a distinct risk, or increased the risk Brisbay would sustain a left ankle injury. Brisbay did not trip, slip, loss[sic] her balance, stumble, or fall. She simply descended some stairs. There is not any evidence the stairs were defective. Although Brisbay testified the steps were

"odd" and "kind of short," there is not any evidence the stairs' parameters and dimensions placed any added stress or strain on Brisbay's left ankle. That is – there is not any evidence the parking garage stairs placed any more stress or strain on Brisbay's left ankle above and beyond what descending any other stairs, either at her house or in the general public, would have caused.

Brisbay did not testify she had difficulty descending these steps. She did not explain navigating these steps were more difficult than the ones at her house or in the general public. Again, Brisbay only indicated the steps were odd and short. The ALJ is not inferring, and finding, Brisbay's statement indicated Brisbay had difficulty navigating the stairs or their design placed additional stress or strain on her left ankle.

Moreover, there is not any expert or lay evidence the stairs' design, dimensions, or parameters, placed added strain or stress on Brisbay's left ankle. There is not any evidence Brisbay was carrying any work items when the incident occurred. There is not any evidence Brisbay's job required her to descend the garage stairs in a non-normal manner – i.e. sprinting or rushing down them to get into the hospital to assist a patient.

There is not any evidence KentuckyOne required Brisbay to park in the garage. There is not any evidence KentuckyOne required Brisbay to use the parking garage's stairs, as opposed to a potential elevator. The ALJ finds navigating the stairs were not a distinct risk associated with Brisbay's KentuckyOne employment. Negotiating these stairs did not increase any risks. There is not any credible evidence the stairs posed a risk greater than what Brisbay faced outside her employment, especially considering she already had a partially torn tendon.

The credible and overwhelming evidence, instead, establishes an idiopathic and personal risk, which the KentuckyOne employment did not cause or contribute to, produced Brisbay's left ankle condition. On October 26, 2016, less than 24 hours before her incident, Brisbay underwent a left ankle MRI. The MRI revealed a partial intrasubstance posterior tibial tendon tear. Brisbay

> underwent the MRI, because she had experienced left foot and ankle pain for at least 10 months.
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> Between December 7, 2015 and October 18, 2016, the Lexington Clinic treated Brisbay on approximately six occasions. The Lexington Clinic records document Brisbay experienced increasing left foot and ankle symptoms. Brisbay's symptoms included pain, stiffness, reduced motion, and reduced strength. The Lexington Clinic diagnosed chronic and worsening rheumatoid arthritis.
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> On October 18, 2016, just nine days before her incident, the Lexington Clinic treated Brisbay for "left foot pain/ ankle pain and swelling [.]" The medical provider documented Brisbay experienced left ankle pain, stiffness, and swelling. The Lexington Clinic diagnosed chronic rheumatoid arthritis. Significantly, it injected Brisbay's left ankle. Brisbay also underwent a left ankle MRI just eight days later.
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> The evidence shows 1.5 weeks before the October 27, 2016 incident, Brisbay: (1) actively experienced left foot/ankle pain, swelling, and stiffness; (2) received left foot/ankle treatment, which included exams, medications, an injection, and MRI; (3) had active and destructive left ankle/foot rheumatoid arthritis and other degenerative changes; and (4) had a partial intrasubstance posterior tibial tendon tear. These facts are not disputed.

The ALJ also found Dr. Dripchak's opinions more credible than those expressed by Dr. McEldowney. He found Dr. McEldowney provided conclusory opinions without discussing what role, if any, the partial tendon tear and rheumatoid arthritis played in causing the complete tear/rupture. The ALJ concluded Dr. Dripchak's findings and opinions establish Brisbay's condition could have occurred anywhere, while performing essentially any activity, and it was a pure coincidence the tendon ruptured at work. The ALJ found Brisbay's employment with KentuckyOne did not increase the risk of a complete tendon tear/rupture.

The ALJ reiterated the lack of evidence establishing KentuckyOne's parking garage stairs placed any more stress or strain on Brisbay's left ankle above and beyond what descending any other stairs would have caused, or it required Brisbay to even park in the garage or use its stairs. The ALJ reiterated Brisbay had an internal weakness, and her condition would have eventually occurred despite her KentuckyOne employment. The ALJ noted this case is somewhat similar to Houghton v. ABF Freight System, Claim No. 2016-86732 (Rendered September 28, 2007). The ALJ concluded by stating:

> The KentuckyOne employment did not increase the risk Brisbay would sustain an ankle injury. The evidence shows she had active destructive arthritis, as well as a partially torn tendon (internal weaknesses), when the innocuous activity of descending some stairs caused the tendon to fully tear. Her condition did not develop while sprinting down stairs to assist a patient. It did not develop from slipping, tripping, or stumbling. Instead, Brisbay's condition developed while casually descending steps. Based on the evidence's totality, the ALJ finds Brisbay did not sustain a compensable work-related injury.

Brisbay filed a petition for reconsideration requesting the ALJ reconsider his opinion. Brisbay outlined Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898 (Ky. App. 1971) and Vacuum Depositing, Inc. v. Dever, 285 S.W.3d 730 (Ky. 2009). Brisbay emphasized the fact that the incident occurred while she was walking down stairs to report to work and that, at the time, no physical condition prevented her from working. She also stated the "evidence of previous concerns with the opposite side of her foot or a diagnosis of rheumatoid arthritis is insufficient to overcome the presumption and reduce same to a permissible inference which can be disregarded by the [ALJ]." According to Brisbay,

a finding of work-relatedness was compelled. The ALJ overruled Brisbay's petition, stating as follows:

> This case came down to risk. The primary question, which the ALJ analyzed several different ways, was whether the Plaintiff's employment increased her injury risk more than what she faced at home or in the general public. The ALJ determined it did not.
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> Increased risks include situations that expose a claimant to a common risk more frequently than the general public faces. The risk increase may include qualitative ones (the risk's nature), or quantitative (the risk's frequency or duration) ones. Some, but certainly not all, examples include: (1) if the employment changes the manner in which the claimant normally does an activity {i.e. sprinting down the hall or stairs to treat a patient}; (2) if the surface is different than the general public encounters {i.e. steeper steps, slicker surfaces, etc.}; or (3) if the employment requires an increased activity {walking all day, etc.}.
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> The ALJ acknowledges the Plaintiff's employment required walking. The Plaintiff walked throughout the hospital, and inserted and maintained PICC lines. Her employment, therefore, increased the frequency she performed an activity – walking. The Plaintiff's non-work-related injury, however, did not occur while, walking throughout the hospital, treating patients – an activity peculiar to her employment (If it had, then this case's outcome, depending on the facts, may have been different.).
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> It, instead, occurred, while walking and descending stairs, in a parking garage. This activity is not an increased risk situation that exposed the Plaintiff to a common risk more frequently than the general public faces. There are very few employment situations where a worker can drive right up to their work area. Most workers, as well as the general public, have to park in a parking lot or garage, and walk to their destination. This walk typically requires ascending or descending stairs, or a ramp. This is an activity most workers perform each and every day. In fact, the ALJ performed it just this morning.

The evidence shows, and the ALJ found, the Plaintiff did not trip, slip, stumble, lose her balance, or fall. There was not any credible evidence the stairs were defective, slick, or contained an obstacle. There was not any credible evidence the stairs' dimensions or parameters placed any additional strain or stress on the claimant's ankle/foot. There was not any credible evidence the claimant was not descending them in a normal fashion. The credible evidence shows the claimant was casually descending stairs, when her left ankle/foot popped.

Despite the Plaintiff's argument, her accident's cause was not "unexplained." When an accident's cause is not readily apparent, it is "unexplained" and there is a rebuttable presumption it arose from the employment. Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898, 900 (Ky. 1971). The medical experts unanimously agreed the Plaintiff's injuries occurred while walking and descending the stairs. This non-work-related injury did not unexplainably occur, while the Plaintiff was sitting in a chair or simply standing. Accordingly, the non-work-related injury's cause was not "unexplained" and the Workman presumption was inapplicable.

Alternatively, even if the Workman presumption was applicable, the Defendant successfully rebutted it. KRE 301 governs rebuttable presumptions. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). A presumption shifts the burden of going forward (to rebut or meet) to the party it goes against. It does not shift the proof burden (i.e., the risk of non-persuasion) from the party who originally has it.

If a party does not rebut the presumption, the other party, whom the presumption favors, prevails. If the party rebuts the presumption, it simply becomes a permissible inference. The ALJ then must weigh the conflicting evidence to decide which is most persuasive. Id.; Jefferson County Public Schools v. Stephens, 208 S.W.3d 862, 866 (Ky. 2006).

A Defendant cannot overcome the Workman rebuttable presumption, unless it affirmatively shows the accident

> was not work-related. Vacuum Depositing, Inc. v. Dever, 285 S.W.3d 730 (Ky. 2009). The employer must affirmatively show a pre-existing disease, physical weakness, a personal mortal enemy, personal behavior, etc., caused the injury. Id. The Defendant successfully showed an internal weakness caused the Plaintiff's accident and all resulting injuries. The ALJ will not repeat his analysis. It appears in the decision, on pages 15 - 18.
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> The ALJ respectfully asserts he correctly understood and summarized the evidence, understood and cited the appropriate legal standard, made the appropriate factual-findings, and applied the findings to the law. These cases are very fact specific. The ALJ found the Plaintiff did not meet her burden. Just because a condition developed on the employer's premises does not mean the work caused, or contributed to, it.

On appeal, and for the first time, Brisbay argues the law of unexplained and idiopathic falls does not apply since she did not fall. Rather, Brisbay argues she simply had a dormant, non-disabling condition which was aroused into reality on October 27, 2016. Importantly, Brisbay did not request additional findings of fact addressing whether she fell.

Brisbay alternatively argues KentuckyOne did not overcome the rebuttable presumption of work-relatedness of unexplained falls established in Vacuum Depositing, Inc. v. Dever, 285 S.W.3d 730 734 (Ky. 2009). She points to the fact that she missed no work due to her left foot/ankle condition prior to the accident, and was under no work restrictions. Brisbay also points to her hearing testimony, asserting the 2015 injury was to the outside area of her left foot/ankle, and the October 27, 2016 injury was to the inside area of her left foot/ankle. Brisbay asserts whether her injury would have occurred despite her employment with KentuckyOne is unknown. What is known is that Brisbay's injury occurred on

KentuckyOne's premises, she was able to use the stairs at her own home without issue, and her job required her to be on her feet for most of the day. Brisbay cites to Clark County Board of Education v. Jacobs, 278 S.W.3d 140 (Ky. 2009).

As the claimant in a workers' compensation proceeding, Brisbay had the burden of proving each of the essential elements of her cause of action including causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Brisbay was unsuccessful in that burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the quality, character, and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); Paramount Foods Inc. v. Burkhardt, 695 S.W.2d 48 (Ky. 1985). As fact-finder, the ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome other than reached by an ALJ, this is not an adequate basis to reverse on appeal. McCloud v.

Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). It must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

As an initial manner, we find no merit in Brisbay's cursory argument that the law of unexplained and/or idiopathic falls is inapplicable since she did not fall. This appears to be the first time Brisbay raises this particular argument. We note at the hearing, the ALJ clarified that the issue of causation/work-relatedness included, "course and scope as well as idiopathic. . ." In the opinion, the ALJ found Brisbay did not prove her left ankle condition arose or occurred from a risk distinctly associated with her KentuckyOne employment. Rather, the ALJ found Brisbay's left ankle condition was caused by an idiopathic and personal risk, which would have occurred regardless of her employment. In her petition for reconsideration, Brisbay did not request *any* additional findings of fact, including whether the work accident resulted in a fall. Therefore, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ALJ's ultimate conclusions. Thus, our sole task on appeal is to determine whether substantial evidence supports the ALJ's decisions. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

We find substantial evidence supports a finding of a fall on October 27, 2016. The Form 101 alleges Brisbay's injury occurred when she felt a pop in her left ankle "causing her to fall on her knees." The report of Dr. Dripchak indicates Brisbay experienced a pop in her left ankle and her "legs collapsed." He indicated

Brisbay managed to catch herself by holding onto the handrail. Drs. Degnore and McEldowney reference only a pop and onset of pain. At the hearing, Brisbay testified as she stepped, she felt a pop, "and I did not completely fall down. I went down, caught myself as I was, you know, going down . . ." Based upon the above, substantial evidence supports a finding Brisbay's accident amounted to a fall bringing her injury within the purview of idiopathic and/or unexplained falls.

Brisbay argues KentuckyOne did not overcome the rebuttable presumption of work-relatedness of unexplained falls established in Workman v. Wesley Manor Methodist Home, supra, and Vacuum Depositing, Inc. v. Dever, supra. Where an employee sustains an injury at work due to a purely individual cause, i.e., such as an internal weakness, and the work does not contribute independently to the effects of the resulting harmful change, the injury as a matter of law is idiopathic in nature and, therefore, not compensable. Workman vs. Wesley Manor Methodist Home, supra. By contrast, an unexplained fall is exactly what its designation purports - that which cannot be identified sufficiently with any thoroughness of detail. Salyers vs. G. & P. Coal Co., 467 S.W.2d 115 (Ky. 1971) and Coomes vs. Robertson Lumber Co., 427 S.W.2d 809 (Ky. 1968).

In Workman vs. Wesley Manor Methodist Home, 462 S.W.2d at 900, the Court acknowledged there is a rebuttable presumption that an unexplained fall which occurs during the course of employment is work-related. In the absence of such rebutting evidence, the ALJ cannot find against the claimant on the issue of whether the accident arose out of the employment. However, the Court found the rebuttable presumption had been reduced to a permissible inference when the

employer presented enough evidence to establish the employee's fall was not unexplained, but, rather, resulted solely from a prior, non-work-related back condition. Id. at 901-902. Consequently, the Court held the evidence did not compel a finding the employment was a causative factor in the employee's injuries. Rather, the ALJ was free either to decide in the claimant's favor or to remain unpersuaded claimant's work was a causative factor in precipitating the injury. Id.

More recently in Vacuum Depositing, Inc. v. Dever, supra, the Kentucky Supreme Court held, "that evidence the claimant was clumsy and wearing high heels was not sufficient to prove that the cause of her fall was idiopathic. The evidence did not overcome the presumption that the fall was unexplained and, thus, that it was work-related." Dever testified she slipped and fell in the break room, but did not know why. The claimant was wearing boots with two inch heels, and denied being dizzy or feeling any pain. Another witness testified the claimant reported being clumsy. Id. at 731-732. The ALJ determined substantial evidence existed to rebut the Workman presumption of work-relatedness. Therefore, the presumption was reduced to a permissible inference, and the weight of reliable evidence established the fall did not arise from claimant's employment. Id. at 732. The Board reversed and remanded, and the Kentucky Court of Appeals affirmed, stating as follows:

> To summarize, a work-related fall occurs if the worker slips, trips, or falls due to causes such as a substance or obstacle on the floor of the workplace or an irregularity in the floor. When the cause of a workplace fall is unexplained, the fall is presumed to be work-related under Workman. Unexplained falls divide ultimately into two categories: 1.) those the employer has shown to result from a personal or idiopathic cause but which

> may be compensable under the positional risk doctrine; and 2.) those that remain unexplained and entitled to a presumption of work-relatedness.
>
> The claimant alleged an unexplained fall but, as in Workman, the ALJ found that the employer rebutted the presumption of work-relatedness and showed the fall to be personal or idiopathic. The employer asserts that the Board erred by substituting its judgment for the ALJ's and, thus, that the Court of Appeals erred by affirming the Board. We disagree.
>
> The ALJ characterized the claimant as "not an entirely credible witness" but determined that a workplace fall occurred although its cause was idiopathic. The fact that the claimant's work did nothing to cause her fall was immaterial under Workman. The record contained no evidence that she suffered from a pre-existing disease or physical weakness that caused her to fall and no evidence that she was engaged in conduct when she fell that would take the injury outside Chapter 342. Nor did the record contain evidence that her footwear was inherently dangerous and inappropriate for work in the employer's offices. Like the Board and the Court of Appeals, we are convinced that evidence the claimant was clumsy and wearing high heels was not sufficient to prove that the cause of her fall was idiopathic. The evidence did not overcome the presumption that the fall was unexplained and, thus, that it was work-related.

Id. at 733-734.

The ALJ clearly found the cause of the October 27, 2016 accident was not of "unexplained" origin but was instead personal or idiopathic in nature. Specifically, the ALJ noted the medical experts agreed Brisbay's left posterior tibial tendon completely tore from its pre-existing partially torn state. Substantial evidence supports the ALJ's conclusion the cause of the October 27, 2016 accident was not "unexplained." The left ankle MRI obtained the day prior to the work incident indicated: 1) multiple osteochondral lesions along the undersurface of the anterior

articular facet of the talus along with significant marrow edema; and 2) heterogeneous abnormal signal within posterior tibial tendon most consistent with partial intrasubstance tear. The November 2016 MRI, as documented in Dr. Degnore's records, demonstrated a complete rupture of the posterior tibial tendon. Dr. Dripchak also opined the pre-existing posterior tibial tendon pathology was instrumental in its ultimate rupture.

We conclude substantial evidence supports the ALJ's conclusion Brisbay's left ankle condition was idiopathic and not work-related, and a contrary result is not compelled. The medical evidence from the Lexington Clinic established Brisbay actively treated for rheumatoid arthritis, which affected both feet and ankles, prior to the October 27, 2016 work incident. On October 18, 2016, Brisbay received an injection in her left ankle, and as noted above, underwent an MRI less than ten days later. As noted by the ALJ, Brisbay obtained an MRI of her left ankle on October 26, 2016, one day prior to the work incident in question, which revealed a partially torn posterior tibial tendon. According to Brisbay, this MRI was obtained due to left foot pain and discomfort for the past year (according to her deposition testimony) or since the beginning of October 2016 (according to her hearing testimony). The ALJ additionally relied upon Dr. Dripchak's opinions over those expressed by Dr. McEldowney, and provided a detailed explanation regarding why.

The ALJ simply found more credible the medical evidence documenting the pre-existing left foot/ankle condition and Dr. Dripchak's opinion regarding the cause of the left ankle condition. That opinion constitutes substantial evidence supporting the conclusion the condition was idiopathic and not work-

related, and was also sufficient to cast doubt on the validity of the rebuttable presumption outlined in Workman v. Wesley Manor Methodist Home, supra, and Vacuum Depositing, Inc. v. Dever, supra.

The ALJ additionally provided a detailed discussion addressing whether there was an increased risk of injury due to Brisbay's work environment, also known as the positional risk doctrine for idiopathic falls. In Stasel v. American Radiator & Standard Sanitary Corp., 278 S.W.2d 721 (Ky. 1955), the claimant was injured while at work when he fell against a hot stove or upon hot sand due to a fainting spell which was subsequently diagnosed as an epileptic seizure. The medical evidence revealed Stasel suffered from a congenital epileptoid condition. In reversing the circuit court's decision affirming the Workers' Compensation Board's holding Stasel's injury was not compensable, the former Court of Appeals, now Supreme Court, stated, in relevant, part, as follows:

> The place of employment may be structurally sound and in good condition and yet constitute a source of danger to one hired to work there and if the place may be fairly said to be the efficient and operative cause of the injury, then the employee is entitled to compensation, even though some infirmity or disability not traceable to the employment may be remotely connected with the injury.
> . . .
>
> The appellant was hired to work in appellee's plant after passing a pre-employment physical examination; he was required to wear a special face mask to protect his respiratory system; there were unusual hazards and risks in the physical conditions of his place of work; and he became unconscious while performing his duties and fell into a hot stove or hot sand and suffered severe burns. Therefore, under these facts the only fair and reasonable finding that could be made was that the peculiar hazards of his employment were a contributing factor to his accident and injury. We think there

> affirmatively appears a clear causal connection between the conditions under which the appellant was working and the occurrence of the injury.

Id. at 723, 724.

In Indian Leasing Co. v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1978), Turbyfill suffered from advanced artherosclerosis, however his condition did not interfere with his ability to work as a truck driver. On the date of his injury, Turbyfill suffered a coronary occlusion resulting in a myocardial infarction. He lost consciousness and fell twelve feet onto concrete where he sustained "crushing injuries to his skull and lacerations of the brain." Id. at 25. The medical evidence established the coronary occlusion and myocardial infarction resulted from Turbyfill's work exertion acting upon his pre-existing artherosclerosis. The medical evidence also indicated his death was caused by the fall which crushed his skull. The Board determined Turbyfill sustained a work-related injury and apportioned 95% of the liability to his employer and 5% to the Special Fund. In affirming the award, the Court of Appeals stated, in relevant part, as follows:

> The basic rule, for which there is now general agreement, is that the effects of such a fall are compensable if the employment placed the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle.
>
> . . .
>
> Liability under the positional risk theory for idiopathic falls is limited to those cases in which the employment placed the employee in a position increasing the dangerous effects of the idiopathic fall. The Stasel case was treated as having been decided under the positional risk theory. Id., 462 S.W.2d at 904, footnote 4. In level fall cases involving no increased danger attributable to the employment, liability may be imposed on the

> employer only if the work was a substantial factor in causing the injury.
> . . .
>
> Turbyfill's employment placed him atop the loaded trailer where the risk of injury from any fall was greatly magnified. There was substantial evidence that he did not die from the myocardial infarction which caused the fall. Rather, the evidence supports a finding that he died from the results of the fall, namely the crushing skull injuries and brain laceration received when his head struck the concrete. The board could find that Turbyfill would have survived had he not suffered the myocardial infarction at work.
> . . .
>
> Had Turbyfill not been working atop the loaded trailer, it is likely that he would have survived the myocardial infarction. When the employment places the employee in a position of danger increasing the effects of a fall, the Special Fund should not be required to relieve the employer of liability for the results of the fall alone. It was the function of the board to apportion the percentages of disability, and the circuit court did not err in refusing to disturb the board's award. [citation omitted]

Id. at 26, 27, 28.

Here, the ALJ provided a detailed analysis in both the opinion and order on reconsideration in finding there was no risk associated with Brisbay's employment with KentuckyOne causing her left ankle condition. He discussed Brisbay's job requirements as a PICC nurse and the fact that her injury did not occur while performing these activities. He also discussed the lack of evidence establishing Brisbay was required to frequently use the stairs or that the stairs increased the risk of her left ankle injury. The ALJ also pointed to the lack of evidence establishing any condition of the stairs which would place Brisbay in any increased risk scenario.

The ALJ performed the appropriate analysis addressing the idiopathic nature of Brisbay's left ankle condition and whether the positional risk doctrine was applicable, and provided a detailed explanation supporting his determination Brisbay's left ankle condition was in fact due to an idiopathic and personal risk, to which her KentuckyOne employment did not cause or contribute. Therefore, since the ALJ performed the appropriate analysis, substantial evidence supports the ALJ's decision, and no contrary result is compelled, we will not disturb the ALJ's determination.

In the order on petition for reconsideration, the ALJ performed a separate analysis under the assumption the work accident was indeed "unexplained," entitling Brisbay to a rebuttable presumption of work-relatedness. The ALJ determined KentuckyOne successfully rebutted the presumption, reducing it to a permissible inference. Relying upon the same evidence, namely the medical records predating the October 27, 2016 work accident and Dr. Dripchak's opinions, the ALJ concluded the weight of reliable evidence established the left ankle condition did not arise from Brisbay's employment with KentuckyOne. The ALJ acted well within his discretion and his determination is supported by substantial evidence. Therefore, we will not disturb his findings on appeal.

Accordingly, the July 16, 2018 Opinion and Order, and the July 30, 2018 Order on petition for reconsideration rendered by Hon. Brent Dye, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER: **LMS**

HON THERESA GILBERT
177 NORTH LIMESTONE
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT: **LMS**

HON H CLAY LIST
3292 EAGLE VIEW LN, STE 350
LEXINGTON, KY 40509

ADMINISTRATIVE LAW JUDGE: **LMS**

HON BRENT E DYE
657 CHAMBERLIN AVE
FRANKFORT, KY 40601